

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Aimee O'Neil,

Case No. 2:20-cv-01050-JAD-DJA

Plaintiff

## **Order Adopting Report and Recommendation and Dismissing Case**

Charlene O'Neil,

### Defendant

[ECF Nos. 5, 7]

On June 17, 2020, the magistrate judge granted Plaintiff Aimee O’Neil’s *in forma* *ris* application, screened her complaint, dismissed it as deficient, and gave her until July 20, to file an amended complaint.<sup>1</sup> The dismissal order advised O’Neil in bold that her to file a proper amended complaint by that deadline would result in a recommendation r case be dismissed.<sup>2</sup> That July 16, 2020, deadline passed without an amended complaint, warned—the magistrate judge issued a report and recommendation to dismiss this action e there are no viable claims on file.<sup>3</sup> The deadline for objections to that recommendation without objection or any request to extend the deadline to file one.<sup>4</sup> “[N]o review is ed of a magistrate judge’s report and recommendation unless objections are filed.”<sup>5</sup>

<sup>1</sup> ECF No. 3.

<sup>2</sup> *Id.* at 4.

3 ECF No. 5.

<sup>4</sup> On August 5, 2020, the court received from O’Neil a motion for entry of default, which appears to ignore the magistrate judge’s order and report and recommendation. *See* ECF No. 7.

<sup>5</sup> *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 A court may dismiss an action based on a party's failure to prosecute her case or obey a  
 2 court order.<sup>6</sup> In determining whether to dismiss an action on one of these grounds, the court  
 3 must consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need  
 4 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
 5 disposition of cases on their merits; and (5) the availability of less drastic alternatives.<sup>7</sup>

6 The first two factors, the public's interest in expeditiously resolving this litigation and the  
 7 court's interest in managing its docket, weigh in favor of dismissal. The third factor, risk of  
 8 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises  
 9 from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
 10 prosecuting an action.<sup>8</sup> A court's warning to a party that its failure to obey the court's order will  
 11 result in dismissal satisfies the fifth factor's "consideration of alternatives" requirement,<sup>9</sup> and  
 12 that warning was given here.<sup>10</sup> The fourth factor—the public policy favoring disposition of  
 13 cases on their merits—is greatly outweighed by the factors favoring dismissal.

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 16 <sup>6</sup> See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with  
 17 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to  
 18 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–  
 19 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to  
 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.  
 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,  
 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

20 <sup>7</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;  
 21 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

22 <sup>8</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23 <sup>9</sup> *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

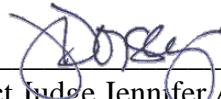
<sup>10</sup> ECF Nos. 3, 5.

1 Accordingly, IT IS HEREBY ORDERED that the magistrate judge's report and  
2 recommendation **[ECF No. 5] is ADOPTED** in full;

3 IT IS FURTHER ORDERED that **this action is DISMISSED**, and the Motion for  
4 Default **[ECF No. 7] is DENIED as moot.**

5 The Clerk of Court is directed to ENTER JUDGMENT ACCORDINGLY and CLOSE  
6 THIS CASE.

7 Dated: August 5, 2020

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9 U.S. District Judge Jennifer A. Dorsey

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